

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

SFUND RECORDS CTR  
SDMS # 47809

REGION IX

IN THE MATTER OF:	)	
CINNABAR, INC.	)	Docket No. 99-04
	)	
UNDER THE AUTHORITY OF THE	)	AGREEMENT AND COVENANT
COMPREHENSIVE ENVIRONMENTAL	)	NOT TO SUE CINNABAR,
RESPONSE, COMPENSATION, AND	)	INC., CINNABAR
LIABILITY ACT OF 1980, 42 U.S.C.	)	CALIFORNIA, CINNABAR
§ 9601, <u>et seq.</u> , as amended.	)	FLORIDA, AND KAMORK
	)	PARTNERS

I. INTRODUCTION

1. This Agreement and Covenant Not to Sue ("Agreement") is made and entered into by and between the United States Environmental Protection Agency ("EPA") and Cinnabar, Inc., Cinnabar California, Cinnabar Florida, and Kamork Partners (collectively the "Parties").
2. This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601, et seq. and the authority of the Attorney General of the United States to compromise and settle claims of the United States.
3. Cinnabar, Inc. ("Cinnabar") is a California corporation with principal offices located at 2840 North Hollywood Way, Burbank, California. Cinnabar California and Cinnabar Florida are subsidiaries of Cinnabar with principal offices located at 2840 North Hollywood Way, Burbank, California and 4551 L.B. McLeod Road, Orlando, Florida, respectively. Cinnabar manufactures

scenery, props and movie miniatures for the entertainment industry.

4. Kamork Partners is a California Limited Liability Company made up of the principals of Cinnabar. Kamork Partners is organized for the purpose of facilitating Cinnabar's acquisition of the property located at 2840 North Hollywood Way, Burbank, California ("Property").

5. Cinnabar, Inc., Cinnabar California, Cinnabar Florida, and Kamork Partners are hereinafter collectively referred to as "Settling Respondents."

6. The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Sections VII, VIII, IX, and X, the potential liability of the Settling Respondents for the Existing Contamination at the Property that would otherwise result from Settling Respondents becoming the owner(s) of the property.

7. The Parties agree that the Settling Respondents' entry into this Agreement, and the actions undertaken by the Settling Respondents in accordance with this Agreement, do not constitute an admission of any liability by the Settling Respondents.

8. The resolution of this potential liability, in exchange for provision by the Settling Respondents to EPA of a substantial benefit, is in the public interest.

## II. DEFINITIONS

9. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

a. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

b. "Existing Contamination" shall mean any hazardous substances, pollutants or contaminants, present or existing on or under the Property as of the effective date of this Agreement, or that migrate to the Property from other properties within the Site.

c. "Parties" shall mean EPA and the Settling Respondents.

d. "Property" shall mean 2840 North Hollywood Way, as described in Exhibit 1 of this Agreement.

e. "Settling Respondents" shall mean Cinnabar, Inc., Cinnabar California, Cinnabar Florida and Kamork Partners.

f. "Site" shall mean the San Fernando Valley Area 1 (North Hollywood) Superfund Site, including but not limited to the Burbank Operable Unit, located in Los Angeles, California, and depicted generally on the map attached as Exhibit 2. The Site

shall include the Property, and all areas to which hazardous substances and/or pollutants or contaminants, have come to be located.

g. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

### III. STATEMENT OF FACTS

10. In 1996, Cinnabar relocated its business from Hollywood, California, to the Property. Cinnabar was encouraged by the City of Burbank to move to Burbank, where large industrial spaces were being converted for entertainment purposes. Cinnabar subsequently entered into a lease with Pacific Airmotive Corporation ("PAC Airmotive") for the property at 2840 North Hollywood Way, with an option to purchase a portion of that property ("the Cinnabar Parcel"). Prior to entering into the lease/option, Cinnabar conducted due diligence on the property and learned that the property had been included in the Site. Cinnabar's environmental consultant concluded that a minimal risk of liability existed to Cinnabar for several reasons, including that the Los Angeles Regional Water Quality Control Board ("RWQCB") had issued a No Further Action letter regarding soil cleanup on the Cinnabar Parcel and that PAC Airmotive had been identified as the responsible party for the groundwater contamination.

11. PAC Airmotive subsequently subdivided the property to

separate the Cinnabar Parcel, the separate address of which remained 2840 North Hollywood Way. The Property consists of 3.0 acres.

12. In 1998, Cinnabar notified General Electric Corporation, which had become the parent of PAC Airmotive, of Cinnabar's intention to acquire the Property. After failing to obtain financing through a commercial lender, Cinnabar sought assistance from the Small Business Administration to finance the purchase. Cinnabar's difficulty in obtaining conventional financing was substantially due to the location of the Property within the Site. Cinnabar therefore sought this Agreement with EPA.

13. Settling Respondents' purchase of the Property will benefit the City of Burbank through the retention of skilled jobs. Cinnabar's business employs approximately 114 persons in highly-skilled, well-paid artisanal and support positions.

14. Settling Respondents' proposed purchase of the Property and continued operations on the Property will not pose health risks to the community or to persons present at the Site, or contribute to the Existing Contamination.

15. Settling Respondents do not own or operate any other property within the Site and are not, and have never been, named as responsible party(ies) at the Site.

16. Settling Respondents have demonstrated to EPA through confidential financial records that Settling Respondents have a

limited ability to pay. Absent a Prospective Purchaser Agreement ("PPA"), Settling Respondents have demonstrated to EPA that obtaining financing to purchase the Property will be extremely difficult. EPA therefore has agreed to a substantially reduced consideration from that ordinarily required for a PPA.

17. The Settling Respondents represent, and for the purposes of this Agreement EPA relies on those representations, that Settling Respondents' involvement with the Property and the Site has been limited to Cinnabar, Inc.'s lease of the Property since 1996.

#### IV. PAYMENT

18. In consideration of and in exchange for the United States' Covenant Not to Sue in Section VIII herein, Settling Respondents agree to pay to EPA the sum of \$ 50,000 (fifty thousand dollars), in two payments: The first payment of \$ 25,000 (twenty-five thousand dollars) shall be due within 30 (thirty) days of the expiration of the public comment period for approval of this Agreement provided the United States does not withdraw its consent to this Agreement; the second payment of \$ 25,000 (twenty-five thousand dollars) shall be due within 180 (one hundred, eighty) days of the first payment. The Settling Respondents shall make all payments required by this Agreement in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund," referencing EPA Region IX, the EPA Docket number, and Site/Spill ID # 09L6, DOJ Case number 90-

11-2-442, and the names and addresses of Settling Respondents.

Payments shall be sent to

U.S. EPA  
Region IX, Attn.: Superfund Accounting  
P.O. Box 360863M  
Pittsburgh, PA 15251

Notice of payment shall be sent to those persons listed in  
Section XV (Notices and Submissions) and to the EPA Region IX  
Financial Management Officer:

Catherine Shen  
Financial Management Specialist (PMD-6)  
USEPA Region IX  
75 Hawthorne St.  
San Francisco, CA 94105

19. The total amount to be paid to EPA shall be placed in the  
Burbank Operable Unit Special Account and used to conduct or  
finance the response actions at or in connection with the Burbank  
Operable Unit. Any balance remaining in the Burbank Operable  
Unit Special Account at the completion of the response at or in  
connection with the Burbank Operable Unit shall be deposited in  
the EPA Hazardous Substance Superfund.

20. Amounts due and owing pursuant to the terms of this  
Agreement but not paid in accordance with the terms of this  
Agreement shall accrue interest at the rate established pursuant  
to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), compounded on  
an annual basis.

V. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

21. Commencing upon the date that they acquire title to the Property, Settling Respondents agree to provide to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight, an irrevocable right of access at all reasonable times to the Property and to any other property to which access is required for the implementation of response actions at the Site, to the extent access to such other property is controlled by the Settling Respondents, for the purposes of performing and overseeing response actions at the Site under federal law. EPA agrees to provide reasonable notice to the Settling Respondents of the timing of response actions to be undertaken at the Property. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, ("RCRA") et. seq., and any other applicable statute or regulation, including any amendments thereto.

22. Within 30 (thirty) days after the effective date of this Agreement, Settling Respondents shall record a certified copy of this Agreement with the Recorder's Office for Los Angeles County,



State of California. Thereafter, each deed, title, or other instrument conveying an interest in the Property shall contain a notice of this Agreement. A copy of these documents shall be sent to the persons listed in Section XV (Notices and Submissions).

23. The Settling Respondents shall ensure that assignees, successors in interest, lessees, and sublessees of the Property shall provide the same access and cooperation. The Settling Respondents shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Property as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section, and Section XI (Parties Bound/Transfer of Covenant), of the Agreement.

#### VI. DUE CARE/COOPERATION

24. The Settling Respondents shall exercise due care at the Site with respect to the Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations. The Settling Respondents recognize that the implementation of response actions at the Site may interfere with the Settling Respondents' use of the Property, and may require closure of its operations or a part thereof. The Settling Respondents agree to cooperate fully with EPA in the implementation of response

actions at the Site and further agree not to interfere with such response actions. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Settling Respondents' operations by such entry and response. In the event the Settling Respondents become aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, immediately notify EPA of such release or threatened release.

#### VII. CERTIFICATION

25. By entering into this Agreement, the Settling Respondents certify that to the best of their knowledge and belief they have fully and accurately disclosed to EPA all information known to Settling Respondents and all information in the possession or control of their officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances,

pollutants or contaminants at or from the Site and to their qualification for this Agreement. The Settling Respondents also certify that to the best of their knowledge and belief they have not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. If the United States determines that information provided by Settling Respondents is not materially accurate and complete, the Agreement, within the sole discretion of the United States, shall be voidable and the United States reserves all rights it may have.

#### VIII. UNITED STATES' COVENANT NOT TO SUE

26. Subject to the Reservation of Rights in Section IX of this Agreement, upon payment of the amount specified in Section IV (Payment), the United States covenants not to sue or take any other civil or administrative action against Settling Respondents for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a), with respect to the Existing Contamination.

#### IX. RESERVATION OF RIGHTS

27. The covenant not to sue set forth in Section VIII above does not pertain to any matters other than those expressly specified in Section VIII (United States' Covenant Not to Sue). The United States reserves and this Agreement is without prejudice to all

rights against Settling Respondents with respect to all other matters, including but not limited to, the following:

a. claims based on a failure by Settling Respondents to meet a requirement of this Agreement, including but not limited to Section IV (Payment), Section V (Access/Notice to Successors in Interest), Section VI (Due Care/Cooperation), Section XIV (Payment of Costs);

b. any liability resulting from past or future releases of hazardous substances, pollutants or contaminants, at or from the Site caused or contributed to by Settling Respondents, their successors, assignees, lessees or sublessees;

c. any liability resulting from exacerbation by Settling Respondents, their successors, assignees, lessees or sublessees, of Existing Contamination;

d. any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Site after the effective date of this Agreement, not within the definition of Existing Contamination;

e. criminal liability;

f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by federal agencies other than EPA; and

g. liability for violations of local, State or federal law

or regulations.

28. With respect to any claim or cause of action asserted by the United States, the Settling Respondents shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

29. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a party to this Agreement.

30. Nothing in this Agreement is intended to limit the right of EPA to undertake future response actions at the Site or to seek to compel parties other than the Settling Respondents to perform or pay for response actions at the Site. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA in exercising its authority under federal law. Settling Respondents acknowledge that they are purchasing property where response actions may be required.

X. SETTLING RESPONDENTS' COVENANT NOT TO SUE

31. In consideration of the United States' Covenant Not To Sue in Section VIII of this Agreement, the Settling Respondents hereby covenant not to sue and not to assert any claims or causes

of action against the United States, its authorized officers, employees, or representatives with respect to the Site or this Agreement, including but not limited to, any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through CERCLA Sections 106(b)(2), 111, 112, 113, or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or any claims arising out of response activities at the Site, including claims based on EPA's oversight of such activities or approval of plans for such activities.

32. The Settling Respondents reserve, and this Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of the Settling Respondents' plans or activities, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA.

Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

#### XI. PARTIES BOUND/TRANSFER OF COVENANT

33. This Agreement shall apply to and be binding upon the United

States, and shall apply to and be binding on the Settling Respondents, their officers, directors, employees, and agents. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

34. Settling Respondents may assign or transfer the Property without the prior written approval of EPA. Notwithstanding any other provisions of this Agreement, all of the rights, benefits and obligations conferred upon Settling Respondents under this Agreement may be assigned or transferred to any person with the prior written consent of EPA in its sole discretion.

35. The Settling Respondents agree to pay the reasonable costs incurred by EPA to review any subsequent requests for consent to assign or transfer the Property. EPA will not charge any other fee in connection with the assignment or transfer of the Property.

36. In the event of an assignment or transfer of the Property or an assignment or transfer of an interest in the Property, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement except as EPA and the assignor or transferor agree otherwise and modify this Agreement, in writing, accordingly. Moreover, prior to or simultaneous with any assignment or transfer of the Property, the assignee or transferee must consent

in writing to be bound by the terms of this Agreement including but not limited to the certification requirement in Section VII of this Agreement in order for the Covenant Not to Sue in Section VIII to be available to that party. The Covenant Not To Sue in Section VIII shall not be effective with respect to any assignees or transferees who fail to provide such written consent to EPA.

#### XII. DISCLAIMER

37. This Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Property or the Site nor constitutes any representation by EPA that the Property or the Site is fit for any particular purpose.

#### XIII. DOCUMENT RETENTION

38. The Settling Respondents agree to retain and make available to EPA all business and operating records, contracts, site studies and investigations, and documents relating to operations at the Property, for at least ten years following the effective date of this Agreement, unless otherwise agreed to in writing by the Parties. At the end of ten years, the Settling Respondents shall notify EPA of the location of such documents and shall provide EPA with an opportunity to copy any documents at the expense of EPA.



XIV. PAYMENT OF COSTS

39. If the Settling Respondents fail to comply with the terms of this Agreement, including, but not limited to, the provisions of Section IV (Payment), they shall be jointly and severally liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement or otherwise obtain compliance.

XV. NOTICES AND SUBMISSIONS

40. Notices to be sent to EPA shall be sent to:

Diane Strassmaier  
Remedial Project Manager  
San Fernando Valley -- Burbank Operable Unit  
75 Hawthorne St., SFD-7-4  
San Francisco, CA 94105

With Copies To:

Marie M. Rongone  
Assistant Regional Counsel  
San Fernando Valley -- Burbank Operable Unit  
75 Hawthorne St., ORC-3  
San Francisco, CA 94105

41. Notices to be sent to Settling Respondents shall be sent to:

Jonathan Katz  
Cinnabar, Inc.  
2840 North Hollywood Way  
Burbank, California 91505

With Copies To:

Malissa Hathaway McKeith, Esq.  
Loeb & Loeb  
1000 Wilshire Blvd., Suite 1800  
Los Angeles, CA 90017

#### XVI. EFFECTIVE DATE

42. The effective date of this Agreement shall be the date upon which EPA issues written notice to the Settling Respondents that EPA has fully executed the Agreement after review of and response to any public comments received. If Settling Respondents (or any of them) take title to the Property before EPA has fully executed the Agreement or before review of and response to any public comments received, and the United States does not withdraw its consent to this Agreement after reviewing public comments, then the effective date of this Agreement shall be the date upon which Settling Respondents took possession or control of the Property. If the Superfund Division Director or the Attorney General does not execute this Agreement, or if the United States withdraws its consent to this Agreement after reviewing public comments, then there is no Agreement and no effective date.

#### XVII. TERMINATION

43. If any Party believes that any or all of the obligations under Section V (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of the Agreement, that Party may request in writing that the other Party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the Party requesting

such termination receives written agreement from the other Party to terminate such provision(s).

#### XVIII. CONTRIBUTION PROTECTION

44. With regard to claims for contribution against Settling Respondents, the Parties hereto agree that the Settling Respondents are entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Agreement. The matters addressed in this Agreement are all response actions taken or to be taken and response costs incurred or to be incurred by the United States or any other person for the Site with respect to the Existing Contamination.

45. The Settling Respondents agree that with respect to any suit or claim for contribution brought by them for matters related to this Agreement, they will notify the United States in writing no later than 60 (sixty) days prior to the initiation of such suit or claim.

46. The Settling Respondents also agree that with respect to any suit or claim for contribution brought against them for matters related to this Agreement, they will notify in writing the United States within 10 (ten) days of service of the complaint on them.

#### XIX. EXHIBITS

47. Exhibit 1 shall mean the description of the Property which is the subject of this Agreement.

48. Exhibit 2 shall mean the map depicting the Site.

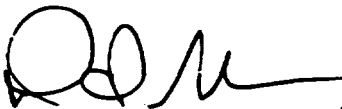
XX. PUBLIC COMMENT

49. This Agreement shall be subject to a thirty-day public comment period, after which EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:



*for Keith Takata*

*12/30/98*

Director, Superfund Division  
Region IX

Date

IT IS SO AGREED:

BY:

Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

Date

IT IS SO AGREED:

BY: Cinnabar, Inc., Cinnabar California, Cinnabar Florida, and  
Kamork Partners

---

Name

Date

IT IS SO AGREED:

BY: Cinnabar, Inc., Cinnabar California, Cinnabar Florida, and  
Kamork Partners

Name

Jonathan Katz

12.29.98

Date

Exhibit 1

LEGAL DESCRIPTION  
(PROPOSED PARCEL A)

THAT PORTION OF PARCEL 1 OF PARCEL MAP NO. 14402, IN THE CITY OF BURBANK, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS SHOWN ON MAP FILED IN BOOK 153, PAGES 54 AND 55 OF PARCEL MAPS, IN THE OFFICE OF THE RECORDER OF SAID COUNTY, LYING SOUTHERLY OF THE FOLLOWING DESCRIBED LINE .

BEGINNING AT THE NORTHWESTERLY CORNER OF SAID PARCEL 1, SAID POINT ALSO BEING THE SOUTHWESTERLY CORNER OF PARCEL 2, OF SAID PARCEL MAP NO. 14402, THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL 2 SOUTH 89° 01' 30" EAST 145.00 FEET TO THE MOST SOUTHERLY SOUTHEASTERLY CORNER OF SAID PARCEL 2; THENCE ALONG THE EASTERLY LINE OF SAID PARCEL 2 NORTH 00° 58' 30" EAST 43.95 FEET; THENCE LEAVING SAID EASTERLY LINE, SOUTH 88° 52' 55" EAST 469.57 FEET TO A POINT ON THE EASTERLY LINE OF SAID PARCEL 1, SAID POINT BEING DISTANT THEREON SOUTH 00° 52' 45" WEST 256.06 FEET FROM THE NORTHEASTERLY CORNER OF SAID PARCEL 1.

THIS LEGAL DESCRIPTION IS NOT INTENDED FOR USE IN THE DIVISION AND/OR CONVEYANCE OF LAND IN VIOLATION OF THE SUBDIVISION MAP ACT OF THE STATE OF CALIFORNIA.

  
ROBERT C. OLSON P.L.S. 5490  
PSOMAS AND ASSOCIATES

4/04/96  
DATE

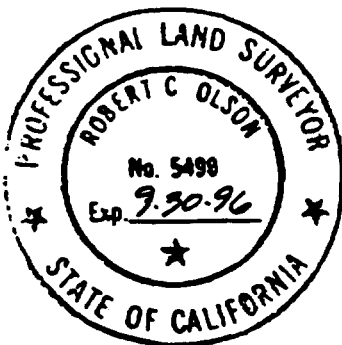




Exhibit 2

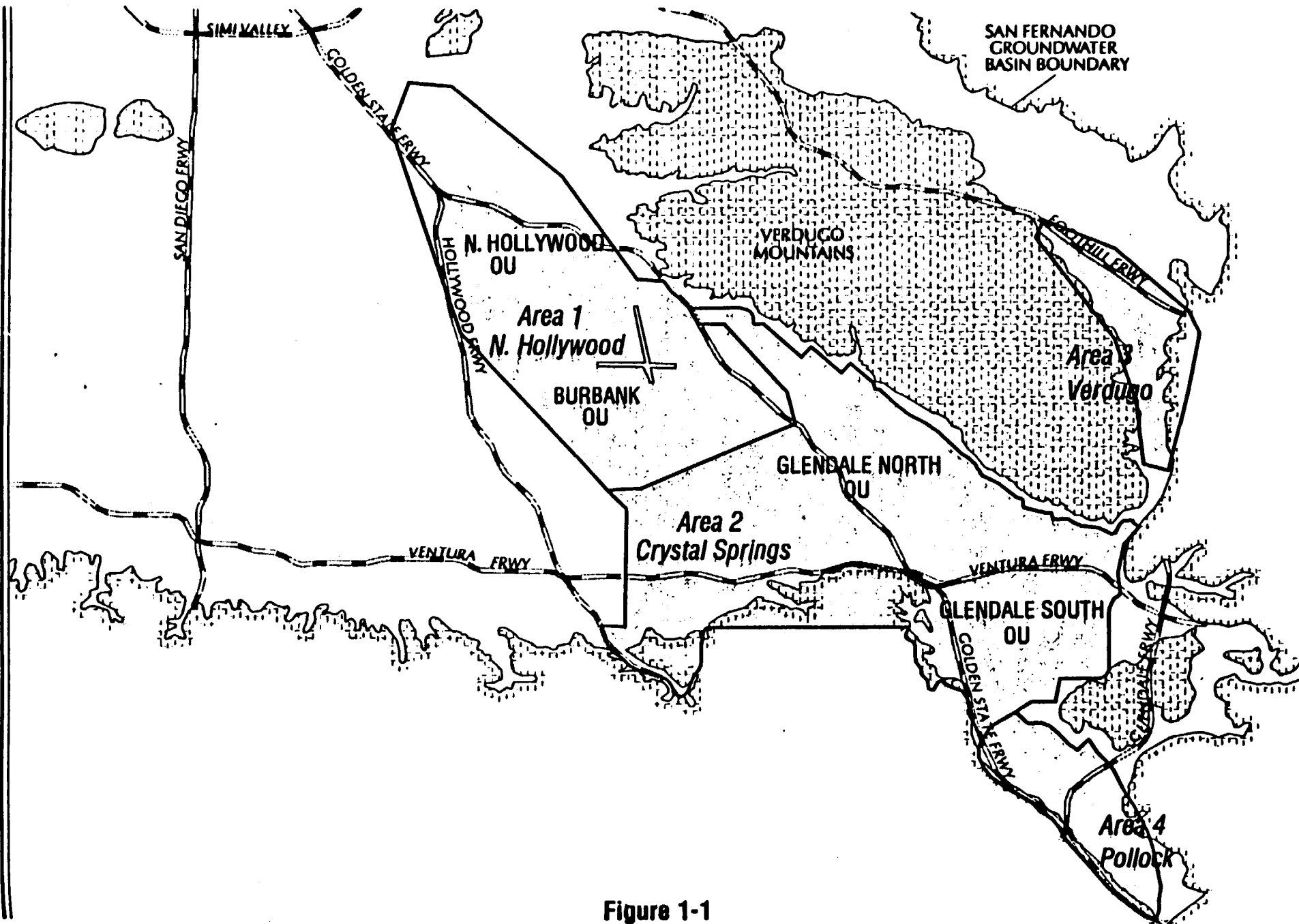


Figure 1-1